

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

APPLE INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 22-1378-MN-JLH
)	
MASIMO CORPORATION and)	JURY TRIAL DEMANDED
SOUND UNITED, LLC,)	
)	
Defendants.)	
)	
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MASIMO CORPORATION and)	
CERCACOR LABORATORIES, INC.,)	
)	
Counter-Claimants,)	
)	
v.)	
)	
APPLE INC.,)	
)	
Counter-Defendant.)	

**UNOPPOSED MOTION FOR LEAVE
TO AMEND FINAL INVALIDITY CONTENTIONS**

Plaintiff and Counter-Defendant Apple Inc. (“Apple”) respectfully moves the Court for leave to amend its final invalidity contentions. The deadline for final invalidity contentions was August 24, 2023. D.I. 92. Specifically, Apple seeks to add an obviousness-type double patenting ground for the invalidity of Masimo Corporation’s (“Masimo”) U.S. Patent No. 8,190,223 patent based on U.S. Patent No. 8,626,255. Good cause exists because the United States Court of Appeals for the Federal Circuit subsequently issued a precedential opinion that held double patenting defenses may apply when patents “have different expirations dates only because of [Patent Term Adjustment].” *See In re: Collect, LLC*, 2023 WL 5519716, at *8-9 (Fed. Cir. Aug. 28, 2023). Apple provided a copy of its proposed amended final invalidity contentions to Masimo.

Pursuant to District of Delaware Local Rule 7.1.1, counsel for the parties met and conferred, and Masimo does not oppose this Motion.

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*Attorneys for Plaintiff/Counter-Defendant
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SO ORDERED, this _____ day of _____, 2023.

United States District Judge